Supreme Court, U.S.
FILED

981606 DEC 15 1998

OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF

THE UNITED STATES

October Term, 1998

CHUCK DUNN, Petitioner

vs.

THE COMMISSION ON PROFESSIONAL COMPETENCE, Respondent, [JURUPA UNIFIED SCHOOL DISTRICT, SANDRA RUANE, MARY BURNS, HOLLY HANKE, JOHN CHAVEZ and SAM KNIGHT, Real Parties In Interest]

PETITION FOR CERTIORARI

CHUCK DUNN
In Pro Se
4881 Brookhill Terrace
Riverside, CA 92509
909/688-3401

41pp

Questions Presented

1. Did the District violate Chuck Dunn's First Amendment rights by firing him in part for protected speech?
   a) Was Dunn's speech and memos that resulted in a newspaper article of some public interest?
   b) Did the District show sufficient disruption of the educational process to justify suppressing Dunn's speech?
2. Did the District violate Dunn's First Amendment rights by firing him in part for First Amendment protected activity?
   a) Was Dunn's First Amendment protected activity a substantial factor in the District's decision to fire him?
   b) Did the District prove it would have taken the same decision in the

absence of Dunn's protected First Amendment activity?

c) Should Dunn have been allowed to present evidence his First Amendment protected activity was a " substantial factor" in the District's decision to fire him including the lax manner the District handled similar and worse allegations against politically favored teachers including actually molesting students?

d) Did the California Court of Appeal err in deciding Dunn's First Amendment rights were not violated because the Commission on Professional Responsibility decided there was good cause for firing Dunn?

3. Does the independent review standard in Bose Corp. v Consumers Union etc. (1984) 466 U.S. 485, 499; 104 S.Ct. 1949, 1958; 80 L.Ed.2d 502, apply in mixed motive cases under Mt. Healthy etc. v. Doyle (1977) 429 U.S. 274, 287; 97 S.Ct. 568,576; 50 L.Ed.2d 471?

4. Must the government show actual disruption of its operations before it can suppress its employees' speech?

5. Was Dunn fired in violation of due process of law?

   a) Did the District and/or the Commission on Professional Competence violate Dunn's due process rights by firing him in part for conduct that did not violate any law, rules, regulations, policy, or orders of his superiors, and which he engaged

in openly for years without objection?

b) Did the District and/or Commission on Professional Responsibility violate Dunn's due process rights by firing him for uncharged alleged misconduct after the Administrative Law Judge running the Commission hearing said seven times he was only concerned whether the written Charges were true and after the District specifically refused the chance to amend its Charges?

Parties to the Proceeding Below

Chuck Dunn

Jurupa Unified School District

("District")

Commission on Professional Competence

("Commission")

(The Commission was an ad hoc administrative tribunal consisting of an Administrative Law Judge (ALJ), and two teachers that originally heard and tried the case. The District is the real party in interest.)

Table of Contents

Questions Presented. i

Parties To The Proceeding Below. vi

Table of Contents. vi

Table of Authorities. viii

The Opinions Below. 1

Jurisdiction. 1

Constitutional Provisions Involved. 2

Statement of the Case. 2

Brief Factual Background. 2

The Legal Proceedings. 7

Reasons for Granting Certiorari. 9

First Amendment. 9

A. Speech Held Protected And/Or Of Public Concern Under the Two Step Test for Public Employee Free Speech. . .11

B. The Government Should Be Required To Show Actual Disruption Before Suppressing Its Employees' Speech. . . . 13

C. Standard Of Review In First Amendment Cases. 15

D. Dunn's Memos and Speech Were Protected. 18

E. Dunn's First Amendment Protected Activities Were A Substantial Factor In The District's Decision To Fire Him. The District Did Not Prove It Would Have Taken The Same Action In The Absence Of Dunn's First Amendment Protected Activities. 19

F. Summary Re: First Amendment Issues. 24

Due Process. 24

A. Insufficient Notice the Conduct was Prohibited. 24

B. Amending the Charges After the Hearing. 25

Conclusion. 29

Table of Authorities

FEDERAL CASES:

Board of County Commissioners v. Umehr
(1996) 518 U.S. 668; 116 S.Ct. 2342;
135 L.Ed.2d 843. 18,24

Boutilier v. Immigration Service
(1967) 387 U.S. 118, 87 S.Ct. 1563,
95 L.Ed. 886. 25

Bose Corp. v. Consumers Union of U.S. Inc.
(1984) 466 U.S. 485; 104 S.Ct. 1949;
80 L.Ed.2d 502. 10,15-17

Brasslett v. Cota
(1st Cir.1985) 761 F.2d 827. 13,15,17

Connally v. General Const. Co.
(1926) 269 U.S. 385; 46 S.Ct. 126;
70 L.Ed. 322. 25

Connick v. Myers
(1983) 461 U.S. 138; 103 S.Ct. 1684;
75 L.Ed. 708. 11,14

Commissioners v. Umbehr
(1996) 688 U.S. 668; 116 S.Ct. 2342;
135 L.Ed.2d 843. 18,24

Germann v. City of Kansas City
(8th Cir.1985) 776 F.2d 761. 14

Givhan v. Western Line Consol. S.D.
(1979) 439 U.S. 410; 99 S.Ct. 693;
58 L.Ed.2d 619. 11

Hall v. Marion School Dist. No. 2
(4th Cir.1994) 31 F.3d 183. 16

Hess v. Indiana
(1973) 414 U.S. 105; 94 S.Ct. 326;
38 L.Ed.2d 303. 16

Hyland v. Wonder
(9th Cir.1992) 972 F.2d 1129. 13

Johnson v. Multnomah County
(9th Cir.1995) 48 F.3d 420. 13

Mathews v. Eldridge
(1976) 424 U.S. 319; 96 S.Ct. 893;
47 L.Ed.2d 18. 28

McDonnell Douglas Corp. v. Green
(1973) 411 U.S. 792, 93 S.Ct. 1817,
36 L.Ed.2d 668. 20

McKinley v. City of Eloy
(9th Cir.1983) 705 F.2d 1110. 13

McMullen v. Carson
(11th Cir.1985) 754 F.2d 936. 14,15,17

Miller v. California
(1973) 413 U.S. 15; 93 S.Ct. 2607;
37 L.Ed.2d 419. 17

Monsanto v. Quinn
(3d Cir.1982) 674 F.2d 990. 13,16,17

Mt. Healthy etc. v. Doyle
(1977) 429 U.S. 274; 97 S.Ct. 568;
50 L.Ed.2d 471. 10,15,20

Pickering v. Board of Education
(1968) 391 U.S. 563; 88 S.Ct. 1731;
70 L.Ed.2d 811. 9,16

Rankin v. McPherson
(1987) 483 U.S. 378; 107 S.Ct. 2891;
97 L.Ed.2d 315. 11-13

Standing Committee etc. v. Yagman
(9th Cir.1995) 55 F.3d 1430. 12,14,18

Street v. New York
(1969) 394 U.S. 576; 89 S.Ct. 1354;
22 L.Ed.2d 572. 16

Waters v. Chaffin
(11th Cir.1982) 682 F.2d 833. 11,12

Waters v. Churchill
(1994) 511 U.S. 661; 114 S.Ct. 1878;
128 L.Ed.2d 686. 14

Voight v. Savell
(9th Cir.1995) 70 F.3d 1552. 13

Zamboni v. Stamler
(3rd Cir.1988) 847 F.2d 73. 12,13

CALIFORNIA CASES[1]:

Chico Police etc. v. Chico
(1991) 232 Cal.App.3d 635. 18

Harry Carian Sales v. A.L.R.B.
(1985) 39 Cal.3d 209; 216 Cal.Rptr 688. . . .28

---

1 Dunn offers these California cases as persuasive authority.

Heard v. Lockheed etc.
(1996) 44 Cal.App.4th 1735;
52 Cal.Rptr.2d 620. 21

Morrison v. State Board of Education
(1969) 1 Cal.3d 214; 82 Cal.Rptr. 175. . . .25

U.S. CONSTITUTION

AMENDMENT I. 2,7-24

AMENDMENT XIV. 2,8,9,24,27,28

U.S.C.

28 U.S.C. §1257(a). 1

The Opinions Below

The Commission issued its decision April 21, 1995. (A:1)[1] Dunn then filed a petition for writ of mandate with the Superior Court of Riverside County, California. The petition was denied June 26, 1996. (A:84) On September 16, 1996, the Superior Court denied Dunn's motion for new trial based on one of the District's witnesses recanting all of her testimony and claiming the District paid her to testify against Dunn. (A:112,142-143)

Dunn appealed to the California Court of Appeal. It issued its decision June 5, 1998. (A:92) The California Supreme Court denied review September 16, 1998. (A:148)

Jurisdiction

This Court has jurisdiction under to review the above decisions under 28 U.S.C. §1257(a).

---

[1] Appendix page 1.

Constitutional Provisions Involved

U.S. Constitution, Amendment I

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Constitution, Amendment XIV, Section 1

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Brief Factual Background[2]

This case involves dismissing an unquestionably "eccentric" but "superb"

---

[2] Dunn's briefs included cites to the record for all of these facts. The cites are not included because there is only a very limited record with this petition.

teacher, an "unconditional teacher," as in "unconditional love." The Commission found "a teacher of respondent's abilities is a tremendous community resource." (D.6;A:54)[3] and:

> "A parade of witnesses - respondent's former students, their parents, his colleagues, and law enforcement officers - testified regarding respondent's unquestioned skills as a teacher, his powerful sway over youth, and his positive influence in the community." (F.47,¶1;A:41)[4]

Part of Dunn's success as a teacher was due to close, friendly and mentoring relationships with the students, (and not just his), in and out of school. He helped them with homework, counseled them on personal and family problems, took them on trips for rafting, gold mining, rattlesnake hunting, shopping, and he lent significant sums of money, Garret Adair $4000 and Richard Ortiz $2000 as examples. No

---

[3] Commission Determination 6.

parents or school officials ever objected to this conduct or advised him not to do it. The District had no rules or policies governing teacher student contact outside of school.

Dunn was also very politically active. (F.4,A:5-10) He helped form a political action committee that replaced three school board members and later elected one of Principal Young's "greatest nightmares" to the board. This greatly upset some in the administration. Dunn and his students suffered years of disparate treatment because of his political activities.

In October 1993, Nancy Woo, a 17 year old student, alleged Dunn was sexually harassing and stalking her. While the District had a long history of lax treatment of teachers accused of similar and worse misconduct including actual molestation, it jumped on

---

[4] Commission Finding 47.

Nancy's charges and fired Dunn without giving him a meaningful chance to respond. A former board member stated by declaration he never saw the District fire a teacher accused of misconduct that did not result in felony charges, (A:187), and there were none here.

The District relied on Nancy, a "known flaky student," Aaron, her admitted LA gang member boyfriend, and "Mandy."

The District also used Dunn's intemperate memos (including A:167) to Principal Young (regarding a budget dispute and perjury by teacher Tieri to protect teacher Hite on sexual battery charges) and giving the memos to a reporter for an article (F.11,A:18-19;A:182). The Charges are at A:149.

The Commission found all of the sexual harassment and stalking allegations were false. (F.21,36,46,A:25,35-36,41) Dunn was trying to

help Nancy and was genuinely concerned about her, like other students. (F.20-21,A:24-25)

After the case was submitted and the District declined to amend the Charges, the Commission amended the Charges. It upheld his dismissal finding his close but purely platonic relationship with Nancy allegedly without her parents' knowledge was immoral and dishonest. (D.1,3,A:43,48) Young testified Nancy's parents were aware they were spending time together. The District did not call her parents to testify. Dunn talked to her parents 8 or 9 times including once when her mother called and asked where they were going. {U}[5]

Mandy signed a declaration recanting all of her testimony against Dunn and claiming the District paid her to testify against Dunn. Mandy previously changed her story so many times the Court of Appeal said of her last

[5] {U} this evidence was undisputed.

recantation it was merely cumulative.(A:145) Before making her allegations, Nancy told coordinator Garcia "I'm mad at Mr. Dunn. I am going to get him in trouble." Nancy testified she "resented" Dunn for acting like her father by checking on her academic progress. Dunn's summary of Nancy's, Aaron's and Mandy's lies, inconsistencies and constantly changing allegations runs 40 single spaced pages.[6]

The Legal Proceedings

Please see "Opinions Below". Dunn contended from the Commission hearing on that his memos and speech were First Amendment protected and his political activities were a "substantial factor" in the District firing him.[7] Most of

---

[6] This petition can only contain a summary of the evidence. The Commission hearing lasted 10 days, with 39 witnesses plus 2 depositions and 81 exhibits. The reporter's transcript is 1995 pages. Dunn's appendix to the Court of Appeal is 1107 pages. Dunn's summary of the evidence filed with the Superior Court is 94 pages.

[7] D.5,A:49; A:88¶4:A:135; P&A filed w/ the Commission, Exb.75; Dunn's brief supporting his petition for writ of mandate p.32. The District did not contend Dunn failed to properly raise any of these First Amendment issues.

Dunn's evidence that his political activities were a "substantial factor" was excluded. The Commission and Superior Court ruled Dunn's First Amendment rights were not violated because the issues that resulted in a newspaper article was not of any public interest. They did not rule on the "substantial factor" issue. (D.5,A:49-53;88¶4) The Court of Appeal held Dunn's First Amendment rights were not violated because the Commission found good cause to fire him. (A:137)

The due process issues arose when the Commission upheld Dunn's firing based on uncharged misconduct he had engaged in for years without objection and that violated no laws, rules, or policies or directives after the ALJ said seven times he was only interested in whether the written Charges were true and the District refused the chance to amend its

charges. Dunn raised the due process issues from the Superior Court level on.[8]

Reasons for Granting Certiorari

FIRST AMENDMENT

First Amendment rights are among our most precious. Pickering v. Board of Ed. (1968) 391 U.S. 563, 572; 88 S.Ct. 1731, 1736; 70 L.Ed.2d 811:

> "Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operations of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal."

The public should not have to depend on official government spokespersons for information. Few if any employees will risk their jobs to the save the taxpayers' money.

The Commission and California courts decided this case contrary to the Constitution and this

---

[8] A:88,¶5;A:127-129; P&A filed w/ the Commission, Exb.75; Dunn's brief supporting his petition for writ of mandate p.6,47. The District did not contend Dunn failed to

Court's decisions, in particular Mt. Healthy etc. v. Doyle (1977) 429 U.S. 274, 287; 97 S.Ct. 568, 576; 50 L.Ed.2d 471. There is also disagreement among Federal Courts of Appeal and this Court regarding following issues. First, does the independent review standard in Bose Corp. v Consumers Union etc. (1984) 466 U.S. 485, 499; 104 S.Ct. 1949, 1958; 80 L.Ed.2d 502 apply in mixed motive cases under Mt. Healthy? Second, must the government show actual disruption before it can suppress its employees' speech or can the government manager say: " I think the speech was probably going to interfere with office operations or close working relationships?"

Dunn also offers the District's attorney's letter to the Court of Appeal explaining why the case is of such public importance. (A:177)

---

properly raise any of these due process issues.

A. Speech Held Protected And/Or Of Public Concern Under the Two Step Test for Public Employee Free Speech

There is a two step test for public employee First Amendment rights. First, is the speech on a matter of " public concern?" Connick v. Myers (1983) 461 U.S. 138, 146; 103 S.Ct. 1684; 75 L.Ed.2d 708. Second, the Court must balance the employee's free speech interest against the state's interest as employer. The state bears the burden of justifying the discharge. Rankin v. McPherson (1987) 483 U.S. 378, 388; 107 S.Ct. 2891, 2899; 97 L.Ed.2d 315.

"Great secular causes, with smaller ones, are guarded." Connick, supra at 147, 1684,1690. "The First Amendment's protections do not turn on the social worth of the statements." Waters v. Chaffin (11th Cir.1982) 682 F.2d 833, 837. The First Amendment protects speech in public and private. Givhan v. Western Line Consol.

S.D. (1979) 439 U.S. 410, 415-416;99 S.Ct. 693, 695; 58 L.Ed.2d 619. Protected speech can be caustic and controversial. Rankin, supra at 387, 2898:

> "The inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern. '[D]ebate on public issues should be uninhibited, robust and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" (Emphasis added)

Rankin, supra at 381, 2895, [employee stated after attempted presidential assassination: "if they go for him again, I hope they get him," protected (386,2898)]; Zamboni v. Stamler (3rd Cir.1988) 847 F.2d 73, 78, [changes in personnel policies and procedures, of public interest]; Waters, supra at 834, 837, [off duty officer calling the police chief a "bastard" and "back stabbing son of a bitch," protected]; Standing Committee v. Yagman (9th Cir.1995) 55 F.3d 1430, 1440,1443 [calling a judge

"dishonest," a "buffoon," a "substandard human," and a "right wing fanatic," protected]; Voight v. Savell (9th Cir.1995) 70 F.3d 1552, 1560, [personnel disputes, of public concern].

B. The Government Should Be Required To Show Actual Disruption Before Suppressing Its Employees' Speech

Cases requiring actual disruption: Zamboni, supra at 79; Johnson v. Multnomah County (9th Cir.1995) 48 F.3d 420,427; Hyland v. Wonder (9th Cir.1992) 972 F.2d 1129,1140 ["actual, material and substantial disruption must be demonstrated"]; McKinley v. City of Eloy (9th Cir.1983) 705 F.2d 1110, 1115 ["real not imagined disruption is required"] Monsanto v. Quinn (3d Cir.1982) 674 F.2d 990, 997 ["no evidence of any substantial disruption"]; Brasslett v. Cota (1st Cir.1985) 761 F.2d 827, 845 ["operational efficiency objections must be real and important"]; Rankin, supra at 378,

2899, ["there is no evidence that [the speech] interfered with the efficient functioning of the office"].

Cases not requiring actual disruption: Yagman, supra at 1443, [attorney comments may be sanctioned "only if they pose a clear and present danger to the administration of justice"]; McMullen v. Carson (11th Cir.1985) 754 F.2d 936, 939 ["serious conflict was almost certain to occur" because a deputy sheriff was a KKK member]; Germann v. City of Kansas City (8th Cir.1985) 776 F.2d 761, 765 [comments made after employee strike and amidst great turmoil in agency]. Some language in Connick v. Myers supra 461 U.S. at 152; 103 S.Ct. at 1692-1693; and Waters v. Churchill. (1994) 511 U.S. 661, 674; 114 S.Ct. 1878, 1887; 128 L.Ed.2d 686 suggests actual disruption may not be required. However, the Court stated:

> "And a government employee, like any citizen, may have a strong, legitimate

> interest in speaking out on public matters. In many such situations the government may have to make a substantial showing that the speech is, in fact, likely to be disruptive before it may be punished." (Emphasis added) Id. at 674; 114 S.Ct. at 1887

Resolving this important issue will increase uniformity of decision, and if resolved the right way, protect First Amendment rights.

C. Standard Of Review In First Amendment Cases

Bose Corp. v Consumers Union etc., supra, 466 U.S. 485, 499; 104 S.Ct. 1949, 1958; 80 L.Ed.2d 502:

> "In cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression."

In addition to Bose, the following cases support independent review on the Mt. Healthy "substantial factor" issues: McMullen v. Carson, supra, 754 F.2d 936, 938; Brasslett v. Cota, supra, 761 F.2d 827, 840; Monsanto v.

Quinn, supra, 674 F.2d 990, 996, fn. 10; and Pickering, supra at 578-579; 1740.

Holding against independent review: Hall v. Marion School Dist. No. 2 (4th Cir.1994) 31 F.3d 183, 193.

Many other First Amendment factual issues receive independent review:

1) Whether defamatory statements were made with actual malice. Bose, supra; 466 U.S. at 508; 104 S.Ct. at 1963.

2) Whether words are "'likely to provoke the average person to retaliation, and thereby cause a breach of the peace.'" Street v. New York (1969) 394 U.S. 576, 592, 89 S.Ct. 1354, 1365, 22 L.Ed.2d 572; Bose, supra, at 505; 104 S.Ct. at 1962.

3) "'Whether advocacy is directed to inciting or producing imminent lawless action.'" Hess v. Indiana (1973) 414 U.S. 105, 108-109, 94

S.Ct. 326, 328-329, 38 L.Ed.2d 303; Bose, supra, at 505-506; 104 S.Ct. at 1962.

4) Whether alleged pornography appeals to "prurient interest" and is "patently offensive" under community standards. Miller v. California (1973) 413 U.S. 15, 93 S.Ct. 2607; Bose, supra, at 506; 104 S.Ct. at 1963

5) Whether statements were recklessly false. Brasslett, supra, at 842-844.

6) "Numerous findings of fact regarding the nature of the Klan and plaintiff's relationship to it." McMullen, supra, at 938.

7) Whether the employee's letters caused "substantial disruption;" Monsanto, supra, at 997, or whether statements caused "actual and significant harm." Brasslett, supra, at 845-846.

8) Whether an attorney's statements interfered with the administration of justice.

Standing Committee etc. v. Yagman, supra, 55 F.3d 1430, 1443.

The possible burden on the courts is secondary to First Amendment rights. County Commissioners v. Umbehr (1996) 688 U.S. 668, 681, 116 S.Ct. 2342, 2350, 135 L.Ed.2d 843.

The Court of Appeal did not use independent review nor rule whether it should. (A:135-138)

D. Dunn's Memos and Speech Were Protected

Dunn's speech and memos were of some public concern, as opposed to "matters of only personal interest" and of "no relevance" to the public's evaluation of [the school or district]." Chico Police etc. v. Chico (1991) 232 Cal.App.3d 635, 644. Dunn's memos resulted in the newspaper article. (A:182)

The issues in Dunn's memos (App.167) are: the budget issue, public employee free speech rights, Young's good friend Huckaby's dismissal from a high level position at a local college,

how the District handled sexual misconduct allegations against teacher Hite, Tieri's possible perjury in Hite's criminal trial, (the reference to "an innocent young girl"), excessive force allegations against a principal, public employee First Amendment rights, and Young's failure to follow the accounting directive. The budget dispute was not merely over $150 for Dunn's students, it was over wasteful "use it or lose it" budgeting.

There was no showing or finding of any disruption. (D.5,A:49-53;88¶4;135-138)

E. Dunn's First Amendment Protected Activities Were A Substantial Factor In The District's Decision To Fire Him. The District Did Not Prove It Would Have Taken The Same Action In The Absence Of Dunn's First Amendment Protected Activities

See Mt. Healthy, supra. The Court of Appeal erred by holding the Commission found good cause to fire Dunn, not whether the District would have fired him in the absence of First Amendment conduct. (A:137)

Most of Dunn's evidence on this issue was excluded, (D.5,A:49-53; A:90¶8; A:135-142), in particular, the lax manner the District handled similar and worse allegations against politically favored teachers including molestation cases.

However, Dunn contends the limited evidence admitted raises a prima facie case of disparate treatment based on his First Amendment protected activities. By analogy to discrimination cases, see McDonnell Douglas Corp. v. Green (1973) 411 U.S. 792, 804, 93 S.Ct. 1817, 36 L.Ed.2d 668, [treatment of misconduct by white employees is "especially relevant"]. As in discrimination cases, the

issue is the employer's motive. Heard v. Lockheed etc. (1996) 44 Cal.App.4th 1735, 1751, 52 Cal.Rptr.2d 620, [showing prima facie case of disparate treatment not onerous, "very little" evidence needed].

The evidence admitted on this issues includes:[9] Young wanted to fire Dunn in January 1993, and complained about Dunn's political activities, (A:174)// Young was concerned Dunn had the political influence to have him fired// prior attempt to solicit false allegations against Dunn// Mrs. Darby: "They're out to get you. You had better watch out."// Dunn's and Vice Principal Moore's undisputed testimony of disparate treatment dating back to 1989// fn.4,A:10// sexual misconduct complaints against Hite "shoved on the back burner"// problem of students making false sexual harassment allegations against other teachers

---

[9] While the record accompanying this Petition is limited,

(A:176)// Young did not give Dunn a meaningful opportunity to respond to the Charges, as he did with Lorenz, who was accused of molesting students// [defense $ solicited at staff meetings for teacher accused of molestation// the massive inconsistencies in Nancy's, Aaron's and Mandy's stories were there if anyone looked// the District avoided gathering any evidence favorable to Dunn including not asking coordinator Garcia what Nancy told him[10]// Young could not recall if he asked if Mr. Woo could confirm any of Nancy's charges// Mr. Woo said " he observed some problem Nancy had with lying and not telling the truth." Young passed on other information he received in 3-5 interviews with Nancy to the District's attorneys, Young did not recall if he passed on that information// " selective discipline" // " Skelly" hearing Monday morning after

---

evidence of all of the following facts is in evidence.

[10] Garcia testified Nancy said "I'm mad at Mr. Dunn. I'm

Thanksgiving, notice mailed Tuesday before Thanksgiving// when District fired Dunn, it did not have a single signed declaration from Nancy et al.// coordinator Pina extensively involved despite testifying it was a student staff problem outside of her responsibility// Nancy's undeserved " A" in PE// paying Mandy to testify// Young said after Nancy made her charges:

> " 'I have finally achieved my greatest contribution toward education, Mr. Dunn is either 'history,' or he's something to that effect.' "

Even without the evidence showing worse allegations against other teachers were handled much more leniently, and Heck's declaration (A:187), the evidence suggests more going on in Dunn's case than trying to rid the school of any sexually oriented teacher misconduct.

There was no evidence or findings the District would have made the same decision in

---

going to get him in trouble."

the absence of Dunn's First Amendment activities. Dunn submits the District failed to prove that if the same "known flaky student"[11] made the same allegations against a politically favored teacher, like Lorenz, the District would have fired him.

F. Summary Re: First Amendment Issues

Dunn contends independent review shows his speech and memos were protected, and he was really fired for exercising his First Amendment rights. Resolving these First Amendment issues and protecting Dunn's right to speak out will benefit all government agencies and employees, and protect the public's right to know. County Commissioners v. Umbehr, supra, 518 U.S. at 674, 116 S.Ct. 2347.

DUE PROCESS

A. Insufficient Notice the Conduct was Prohibited. Civil and criminal statutes must

[11] So testified guidance coordinator Ernie Garcia.

provide fair notice. Connally v. General Const. Co. (1926) 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322; Boutilier v. Immigration Service (1967) 387 U.S. 118, 123, 87 S.Ct. 1563, 1566, 95 L.Ed. 886. Morrison v. State Board of Education (1969) 1 Cal.3d 214, 231; 82 Cal.Rptr. 175.

Regarding Dunn's close but purely platonic relationship with Nancy, Dunn openly engaged in similar relationships with male and female students for years. These relationships did not violate any laws, rules, policies, or directives from his employer. He was never counseled or advised against same.

B. Amending the Charges After The Hearing.

Dunn was also entitled to notice of and opportunity to rebut the Charges. Mathews v. Eldridge (1976) 424 U.S. 319, 334, 96 S.Ct. 893, 902, 47 L.Ed.2d 18. The District declined the opportunity to amend its Charges at the hearing. The ALJ said seven times the

Commission was only interested in whether the Charges were true. The Commission found most of the Charges were false but fired Dunn based in large part on uncharged misconduct. Dunn and his attorney did not know what alleged misconduct he was being fired for until they received the Decision.

This new alleged misconduct is: F.22,47,D.1;A:25,41,43, (re allegedly spending a great deal of time alone with Nancy without her parents' knowledge. The Charges allege only that her parents did not know they sometimes ate at restaurants. (Chg.6,A:152; F.25,A:28) However, one of the major grounds for the Decision was Dunn supposedly concealed his relationship with Nancy from her parents.[12] F.30;A:32, (the Sciortino trip) could have been

[12] When Pina, Young and the District's attorneys interviewed Nancy multiple times over the one month from when Nancy making her first set of charges to sending Dunn the Charges, did they really ask Nancy if her parents knew about their eating together on the shopping trips and not ask if her parents knew about the shopping trips?

evidence of Dunn's supposed undying love for Nancy. The Commission found it was an independent instance of misconduct. F.27;A:29, (the insurance) Dunn was charged with adding Nancy to his insurance. In Charges, the insurance was a minor issue. The Commission made it a major issue and found Dunn guilty of dishonesty with his insurance company. This evidence was brought in the last afternoon of the hearing on rebuttal. Dunn could not gather contrary evidence.[13] F.41;A:37, (referring Mandy to his attorney after which Mandy changed her declaration exculpating Dunn)[14]. F.43;A:38, (attempting to improperly influence Mandy's testimony and Mandy being "concerned" about Dunn's "influence over her associates")

---

[13] Dunn's ins. co. deleted Nancy retroactively to the date she was added, and did not charge him any premium increase.

[14] Her original declaration, not the one she latter signed recanting all of her testimony and claiming the District paid her to testify against Dunn. (While it was not raised as a due process issue below, does paying Mandy to testify and then firing Dunn based on her testimony

F.48;A:42, (not respecting the proceeding, attempting to influence unnamed witnesses, etc.). F.31;A:33, (allegedly telling Mandy to call Aaron and tell him 2 men were watching his home) is different than (Chg.23;A:158). The District alleged Dunn "admitted" to Mandy he asked 2 men to watch Aaron's home and "mentioned" the men were carrying guns. Per Chg.24, the men were there. Aaron and his cousin (who did not testify) saw them, but not the Commission. (F.31,36,37; A:33-36)

This case is similar to Harry Carian Sales v. A.L.R.B. (1985) 39 Cal.3d 209, 216 Cal.Rptr 688, [employer found guilty of the charged unfair labor practices and additional rather closely related, but uncharged, unfair labor practices. This was "contrary to elementary constitutional principles of procedural due

---

violate due process?)

process and must be set aside." Id. at 252. The Court explained:

> "Even if the incidents had been said to be intertwined with those charged in the complaint, petitioner had no way of fathoming whether Carian's conduct on these two occasions was merely being considered as a factor in setting aside the election or as unfair labor practices in and of itself." Id. at 251.

The Court of Appeal ruled Dunn could be fired for the unalleged misconduct because he did not object to the evidence. (A:136) However, the evidence was relevant to the alleged misconduct. For example, the alleged conversations with his insurance agent were relevant to showing Dunn added Nancy to his insurance. The Commission then found Dunn was dishonest with the insurance company. (F.27,A:29)

Conclusion

Dunn respectfully submits by granting certiorari, the Court can resolve many important issues and increase uniformity of

decision. The Court can provide public employees the necessary breathing room to keep the public informed. The Court can also, at long last, do justice for this "superb" teacher wrongfully fired for political reasons.

Dated: March 30, 1999

CHUCK DUNN, Pro Se